

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1270

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/s

THE UNITED STATES OF AMERICA,

Appellee,

v.

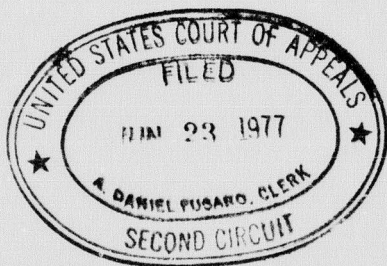
ANTHONY JAMES SEBASTIAN and
PATRICK GIBBONS,

Appellants.

No. 77-8174

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF NEW YORK

JOINT APPENDIX



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-1973-237

ANTHONY JAMES SEBASTIAN a/k/a
TONY SEBASTIAN and PATRICK GIBBONS,

[Superseding]

Defendants

APPEARANCES: RICHARD J. ARCARA, ESQ.
United States Attorney
(ROGER P. WILLIAMS, ESQ., of Counsel)
Buffalo, New York, for the Government.

ROBERT C. MACHEK, ESQ.
Buffalo, New York, for Defendant Sebastian.

DOYLE & DEBISAN
(GEORGE P. DOYLE, ESQ. and ROBERT S. SICHEL,
ESQ., of Counsel), Buffalo, New York, for
Defendant Gibbons.

The defendants in this case were indicted in June of 1973 in a three-count indictment charging them with two substantive counts of uttering and publishing forged United States Savings Bonds and one count of conspiring to utter and publish forged United States Savings Bonds in violation of 18 U.S.C. §§472^{1/} and 371. After substantial delays caused by pretrial motions and appeals,

the case came on for trial in May of 1976. After the jury was impaneled and sworn, the Government, realizing that it had proceeded under the wrong statute and that the proof it was about to present did not conform to the charges alleged, requested the court to dismiss the indictment. What the Government intended to prove was that the defendants had passed genuine United States Savings Bonds with forged payee signatures.

The court dismissed the indictment on the Government's request. The defendants were then reindicted in June of 1976 and charged with violations of 18 U.S.C. §§495^{2/} and 371. Under this new thirty-seven count indictment, the Government alleges that each defendant "did aid, abet, counsel, command and induce [a third individual] to forge the endorsement of Bernice Goulder on [thirty-six separate] United States Saving[s] Bonds." The final count in the 1976 indictment is a conspiracy count which alleges the same overt acts alleged in the conspiracy count of the first indictment.

The defendants have moved to dismiss the 1976 indictment on double jeopardy and speedy trial grounds.

I. DOUBLE JEOPARDY

The double jeopardy clause of the fifth amendment states that ". . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb" The inclusion of the double jeopardy clause in the Bill of Rights was an acknowledgement by the founding fathers of this country of the severe and onerous burdens put on an individual by a criminal prosecution. The difficulties imposed on a criminal defendant were thought to be so great that it was only fair to allow the Government one chance to convict a person on any one crime. As the Supreme Court has expressed it,

the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Green v. United States, 355 U.S. 184, 187-88 (1957).

The first inquiry for the court is whether jeopardy has attached. In the usual jury trial, jeopardy attaches upon the impaneling and swearing of the jury.

Serfass v. United States, 420 U.S. 377, 388 (1975);
Downum v. United States, 372 U.S. 734 (1963). Having
satisfied that requirement, in order for double jeopardy
to apply, the general rule is that the two offenses "must
be the same in law and in fact." United States v. Pacelli,
470 F.2d 67, 72 (2d Cir. 1972), cert. denied, 410 U.S. 983
(1973).

It is agreed by both the parties, and is evident
from the two indictments, that the underlying facts of the
charges alleged in each of the indictments are the same.
The Government claims, however, that the offense charged
in the 1973 indictment and the offense charged in the 1976
indictment are not identical and thus do not give rise to
the double jeopardy plea.

A comparison of the two statutes, which are re-
produced in the margin, SMRCA, appears to substantiate this
analysis. Section 472 pertains specifically only to
"falsely made, forged, counterfeited, or altered obliga-
tion or other security of the United States," while §495,
on the other hand, under distinct and separate paragraphs,
prohibits the counterfeiting, uttering or presenting of

"any deed, power of attorney, order, certificate, receipt, contract, or other writing" with intent to receive money from the United States Government. As the Government points out in its brief, forging a signature on a genuine United States Bond is a violation of §495, whereas the passing of a counterfeit United States Bond or other security is a violation of §472. See Roberts v. United States, 331 F.2d 502 (9th Cir. 1964).

The defendants argue, however, that the "same in law and fact" test should not be determinative in this case, because, unlike the cases on which the Government relies, the evidence here is ~~not~~ sufficient to support a case under both §472 and §495. For example, United States v. Pacelli, supra, cited by the Government, involved a prosecution for drug possession and distribution. The defendant was convicted of conspiracy to possess and distribute, the same offense to which he had earlier pled guilty. However, when the defendant raised the plea as a bar to the conviction, the court expressly pointed out that the alleged conspiracies involved two distinct time periods and different overt acts. The only common

conspirator was this particular defendant. Other cases cited by the Government are similar in showing evidence of more than one offense. See United States v. McCall, 489 F.2d 359 (2d Cir. 1973), cert. denied, 419 U.S. 349 (1974); United States v. Nathan, 476 F.2d 456 (2d Cir. 1973), cert. denied, 414 U.S. 823 (1973).

The defendants urge the court to apply the "same transaction" test championed by Justice Brennan in Abbate v. United States, 359 U.S. 187 (1959), in which he stated:

. . . I think it clear that successive federal prosecutions of the same person based on the same acts are prohibited by the Fifth Amendment even though brought under federal statutes requiring different evidence and protecting different federal interests.

. . .

. . . I think not mere violence to, but virtual extinction of, the [double jeopardy] guarantee results if the Federal Government may try people over and over again for the same criminal conduct just because each trial is based on a different federal statute protecting a separate federal interest. 359 U.S., at 197, 201.

It should be noted, however, that these comments are Justice Brennan's alone and have not been joined in by a

majority of the Court. See Ashe v. Swenson, 397 U.S. 436, 448 (1970) (J. Brennan, concurring). See also United States v. Cioffi, 487 F.2d 492, 497, n.5 (2d Cir. 1973). Although Justice Brennan's reading of the double jeopardy clause is persuasive, it has not yet been accepted as the law.

Defendants contend, however, that United States v. Sabella, 272 F.2d 206 (2d Cir. 1959), did accept the "same transaction" test for this circuit. That case was later narrowly interpreted by the Second Circuit in United States v. Cioffi, *supra*, 487 F.2d at 497-98, and, in light of subsequent Supreme Court decisions, the defendants' interpretation of it appears strained.

Illinois v. Somerville, 410 U.S. 458 (1973), a case that none of the parties have cited, supports our conclusion that double jeopardy does not apply in this case. In Somerville, a nearly identical situation to that before this court had occurred. The defendant was indicted and brought to trial for theft. After the jury was impaneled, the state prosecutor realized that the indictment failed to allege that the defendant intended to deprive the owner of the stolen goods. This omission of

a necessary element of the crime charged made the indictment fatally defective. The State moved for a mistrial and the trial court granted the motion.

As the Court explained in Somerville,

. . . in cases in which a mistrial has been declared prior to verdict, the conclusion that jeopardy has attached begins, rather than ends, the inquiry as to whether the Double Jeopardy Clause bars retrial.

United States v. Somerville, supra, 410 U.S., at 467.

Since the defect in the indictment was jurisdictional, and would be grounds for reversal under Illinois law, the Court held that the declaration of a mistrial and retrial under a new indictment were proper under the "manifest necessity" and "ends of public justice" test of United States v. Perez, 22 U.S. (9 Wheat.) 579 (1824).

In the present case, the Government acknowledged that its original indictment was invalid and requested that it be dismissed. Defense counsel acknowledged that had the trial proceeded, a motion to dismiss at the conclusion of the Government's case would have to be granted. (Transcript, May 7, 1976, at 10). In granting the Government's motion to dismiss

the indictment, this court stated: ". . . this is an unfortunate turn of events but it is essential and therefore I have no other alternative." (Transcript, May 7, 1976, at 11).

The Somerville Court distinguished three prior Supreme Court double jeopardy decisions, United States v. Jorn, 400 U.S. 470 (1971); Downum v. United States, 372 U.S. 734 (1963); and United States v. Ball, 163 U.S. 662 (1896).

In Ball, the defendant was acquitted by a jury of a charge of murder. Two codefendants, who were convicted, appealed and their convictions were reversed because the indictment was defective. The State reindicted all three of the defendants. As to the defendant who had been acquitted, the Supreme Court ruled that an acquittal, even under a defective indictment, is a bar to retrial. In the present case, unlike Ball, the trial did not proceed to verdict.

In Downum, after the jury was impaneled and sworn, the Government asked that the jury be discharged because a key prosecution witness on two of the seven

counts was not present. The defendant urged that the two counts for which this witness was needed be dismissed and the trial continue as to the remaining charges. The trial court dismissed the jury. The Supreme Court, noting that the Government had moved to trial knowing that its witness was missing, and that the defendant had been deprived of "the valued right . . . to have his trial completed by the particular tribunal summoned to sit in judgment on him," 372 U.S., at 736, ruled that retrial was barred by the double jeopardy clause.

The Jorn case involved an unusual situation where a trial judge, after the trial had commenced and without consultation with either Government or defense counsel, dismissed the jury because he believed that the prosecution witnesses needed legal counsel before testifying. The Supreme Court ruled that this action by the trial judge was an abuse of discretion and that double jeopardy barred a retrial.

Like the situation in Somerville, this case is distinguishable from Ball, Downum, and Jorn. If this case

had gone to a verdict, a retrial because of a defective indictment would have been barred by United States v. Hall, supra. Having considered all the circumstances, this court believed it proper to dismiss the original indictment. Consequently, Illinois v. Somerville, supra, controls and double jeopardy does not bar the prosecution under the reindictment.

[Pages 12 - 22 of Judge Curtin's decision, which concern defendants' speedy trial claim, are omitted from this Appendix.]

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

ANTHONY JAMES SEBASTIAN a/k/a
TONY SEBASTIAN and PATRICK GIBBONS

MARCH 1973 Session ~~XXXXXX~~

No. 1973 237

Vio. T. 18, U.S.C.,
Sections 371, 472
and 2

COUNT I

The Grand Jury Charges:

That on or about the 4th day of May, 1972, and continuing to on or about the 26th day of May, 1972, in the Western District of New York and elsewhere, the defendants ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN and PATRICK GIBBONS wilfully, knowingly and unlawfully combined, conspired and agreed together and with other persons, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 472 and 2 by uttering and passing with intent to defraud forged obligations of the United States, to wit, thirty-six (36) United States Savings Bonds, Series E; in violation of Title 18, United States Code, Section 371.

OVERT ACTS

At the following times hereinafter mentioned,
the defendants committed the following overt acts in

furtherance of said conspiracy and to effectuate the objects thereof:

1. On or about the 25th day of May, 1972, the defendant ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN gave Richard Ames thirty-six (36) United States Savings Bonds, Series E.

2. On or about the 25th day of May, 1972, the defendant ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN gave said Richard Ames identification sufficient to enable said Richard Ames to negotiate said thirty-six (36) United States Savings Bonds.

3. On or about the 26th day of May, 1972, the defendants ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN and PATRICK GIBBONS did meet at the Casablanca Restaurant in Buffalo, New York, for the purpose of receiving a portion of the proceeds resulting from the cashing of said United States Savings Bonds.

COUNT II

The Grand Jury Further Charges:

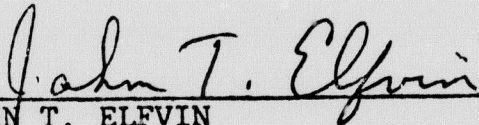
That on or about the 26th day of May, 1972, in the Western District of New York, the defendants ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN and PATRICK GIBBONS did knowingly and with intent to defraud pass and utter

a forged obligation of the United States; to wit, United States Savings Bond, Series E, Serial Number Q2165871669E, face amount \$25.00, issue date May 1966; all in violation of Title 18, United States Code, Sections 472 and 2.

COUNT III

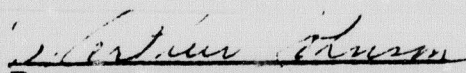
The Grand Jury Further Charges:

That on or about the 26th day of May, 1972, in the Western District of New York, the defendants ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN and PATRICK GIBBONS did knowingly and with intent to defraud pass and utter a forged obligation of the United States; to wit, United States Savings Bond, Series E, Serial Number Q1997736689E, face amount \$25.00, issue date August 1963; all in violation of Title 18, United States Code, Sections 472 and 2.



JOHN T. ELFVIN
United States Attorney

A TRUE BILL:



Foreman

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

ANTHONY JAMES SEBASTIAN and
PATRICK GIBBONS.

Superseded

MARCH 1976 SESSION ~~Term~~

(Impaneled 3/16/76)

No.

(R73-237)

Vio. T. 18, U.S.C.,
Sections 371, 495
and 2

COUNT I

The Grand Jury Charges:

On or about the 26th day of May, 1972, in the Western District of New York, the defendants, ANTHONY JAMES SEBASTIAN and PATRICK GIBBONS, and Richard Ames, not named as a defendant, did aid, abet, counsel, command and induce Dolores Dombrowsky to forge the endorsement of Bernice Goulder on a United States Savings Bond bearing Serial Number Q1987602561E in the face amount of \$25.00, which bond was owned by Bernice Goulder, for the purpose of obtaining and receiving a sum of money from the United States and its agents; all in violation of Title 18, United States Code, Sections 495 and 2.

[Counts II - XXXVI, identical to Count I except that a different serial number is alleged in each Count, are omitted from this Appendix.]

COUNT XXXVII

The Grand Jury further charges:

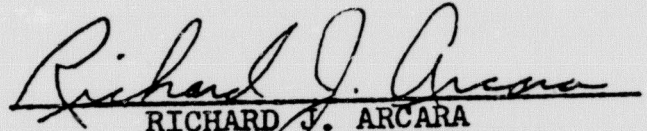
That between on or about May 25, 1972 and May 26, 1972, in the Western District of New York, and elsewhere, the defendants, ANTHONY JAMES SEBASTIAN and PATRICK GIBBONS, did wilfully, knowingly and unlawfully combine, conspire and agree together and with Richard Ames and Dolores Dombrowsky, named as co-conspirators but not co-defendants, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 495 and 2 by forging the endorsement of Bernice Goulder on thirty-six (36) Series E United States Savings Bonds, set forth above, for the purpose of obtaining and receiving a sum of money from the United States and its agents; in violation of Title 18, United States Code, Section 371.

OVERT ACTS

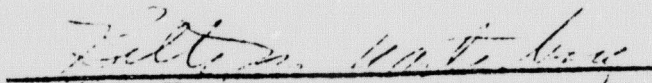
At the following times hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effectuate the objects thereof:

1. On or about the 25th day of May, 1972, the defendant ANTHONY JAMES SEBASTIAN gave Richard Ames thirty-six (36) Series E Savings Bonds in the name of Bernice Goulder.
2. On or about the 25th day of May, 1972, the defendant ANTHONY JAMES SEBASTIAN gave Richard Ames identification in the name of Bernice Goulder.
3. On or about the 26th day of May, 1972, the

defendants ANTHONY JAMES SEBASTIAN and PATRICK GIBBONS
met at the Casablanca Restaurant in Buffalo, New York,
for the purpose of receiving a portion of the proceeds
resulting from the cashing of said thirty-six (36)
United States Savings Bonds.


RICHARD J. ARCARA
United States Attorney

A TRUE BILL:


J. J. Mathey
Dep. Foreman

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

CRIMINAL DOCKET
CR. 1973-237

5 -v-

6 ANTHONY JAMES SEBASTIAN, a/k/a TONY
7 SEBASTIAN; PATRICK GIBBONS,

8 Defendants.

9 * * * * *

10 Proceedings of trial held before the HON. JOHN T.
11 CURTIN, United States District Judge, and a Jury, in Part I,
12 United States Court House, Buffalo, New York, commencing on
13 May 4, 1976.

14 APPEARANCES:

15 RICHARD J. ARCARA, United States Attorney,
16 by ROGER P. WILLIAMS, Esq., Assistant
United States Attorney.

17 PHILIP B. ABRAMOWITZ, Esq., Attorney for
18 the defendant ANTHONY JAMES SEBASTIAN.

19 GEORGE P. DOYLE, Esq., Attorney for the
20 defendant PATRICK GIBBONS; ROBERT S. SICHEL,
21 Esq., of Counsel.

22
23
24
25

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 PROCEEDINGS: May 4, 1976, 2:40 P.M.

2 APPEARANCES: As before noted.

3 (Defendants present.)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 We are here this afternoon to select a
6 jury in the case of United States of America
7 vs. Anthony Sebastian and Patrick Gibbons.

8 Mr. White, have a jury step into the
9 box, please.

10
11 (A jury of twelve, plus two alternate
12 jurors duly examined, empanelled and sworn.)

13
14 THE COURT: We are going to start the Van Vleck
15 case tomorrow. We think that will take us
16 up through the rest of the week. Something
17 unusual might happen and we might call you
18 in earlier but I do not think so. Let us
19 leave it this way, we will leave a message
20 for you on the telephone on Friday evening
21 so you may call any time on the weekend.
22 You all have the number to call. Call any
23 time on the weekend. Remember there will
24 be several other messages on the phone.
25 Your message will be in the case of United

HEMLOCK
BRASS
CUTTING CONTENT

1 States against Sebastian and Gibbons so
2 that is the message you are to listen for
3 so we will then be able to tell you when
4 to come in so we can begin the trial of
5 this case.

6 Remember my discussion and direction
7 to you, do not talk about it, do not discuss
8 it, do not do any checking up about how you
9 cash in savings bonds, nothing like that.
10 Wait until we have the trial. Keep your
11 minds open. I think you should go to the
12 jury room together. Even though some of
13 you have been there before go out with the
14 Marshal and that is your place to convene
15 when we ask you to come back sometime this
16 week end.

17 You may now walk out with the Marshal.
18 We will be in recess.

19
20 (Jury escorted from the court room.)

21
22 THE COURT:

23 Mr. Knisley, can you step over here,
24 and would you have the defendants Mr.
25 Sebastian and Mr. Sebastian, Mr. Gibbons,
Mr. Sichel, Mr. Abramowitz.

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

(Sidebar conference had between the Court, counsel and the defendants as

follows:

MR. SICHEL:

Your Honor, it is my understanding at this time just so that the record is clear I would like to enter Mr. Gibbons' consent that I appear as counsel to George Doyle for the sole purpose of selection of the jury in this case.

MR. ABRAMOWITZ:

If I might acknowledge something, I have been assigned to represent Mr. Sebastian and Mr. Sebastian was offered a plea to the lowest count, the five year count in this indictment. Mr. Williams indicated if Mr. Sebastian would testify he might be in position to recommend another count that Mr. Sebastian might accept. Mr. Sebastian, however, has turned down that and told me that he would like to go to trial on this and I would like to put that on the record.

THE COURT:

Can you hear what the lawyers said, Mr. Sebastian, - you heard that?

THE DEFENDANT SEBASTIAN: Yes.

THE COURT:

As I understand it, Mr. Williams is willing to permit you to plead to a conspirac

count.

MR. ABRAMOWITZ:

Yes, your Honor.

THE COURT:

And if you plead and if you testify then he would recommend to the Court that you would be put on probation.

MR. WILLIAMS:

Your Honor - - -

MR. ABRAMOWITZ:

He might be able to - - -

MR. WILLIAMS:

He never really got to discussing the matter. I said I would consider that. I want to check with Mr. Arcara and check on Mr. Abramowitz's client and check on his background.

MR. ABRAMOWITZ:

What I said, I believe Mr. Williams said he might be in a position to recommend that but Mr. Sebastian told me yesterday in my office that he would not testify, he wanted to go to trial.

THE COURT:

Mr. Gibbons, as far as Mr. Sichel being here, I directed Mr. Doyle to be here to select a jury and he wasn't here. Mr. Sichel who is associated with Mr. Doyle and he has familiarized himself with the case. I understand it is agreeable with you he act as your attorney today.

THE DEFENDANT GIBBONS: Yes,

1 THE COURT: Mr. Sichel, tell Mr. Doyle he has to
2 keep himself open for this trial.
3 MR. SICHEL: Okay, your Honor.
4 THE COURT: He is not to get involved in another
5 trial which will interfere. I expect we
6 will be able to begin this case next Tuesday.
7 MR. SICHEL: I think Mr. Doyle's next commitment
8 is to report back to Judge Heffron on May
9 13th.
10 THE COURT: Judge Marshall was looking for him
11 today.
12 MR. ABRAMOWITZ: Judge Heffron was too.
13 THE COURT: He wanted to know, "is George Doyle
14 there with you" and I said, "I will not
15 tell a lie." All right. Have him find out
16 what is going on over there and tell him to
17 check with me for the best time and we will
18 figure out what to do.
19 MR. SICHEL: Okay.
20 THE COURT: Thank you.
21
22 (Sidebar conference concluded.)
23
24 THE COURT: Mr. Abramowitz, Mr. Williams, you are
25 excused.

1 MR. SICHEL:

May I go also, your Honor.

2 THE COURT:

Mr. Sichel, certainly. Mr. Gibbons
3 and Mr. Sebastian, when you get a message
4 from us then please return.

5 We will be in recess.

6
7 (Recess taken at 4:02 P.M.)

8
9 * * * * *

10 HENLOCK
11 BRASABILL
12 COTTON CONTENT
13
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25

1 PROCEEDINGS: May 7, 1976, 11:05 A.M.

2 APPEARANCES: As before noted.

3 (Defendants present.)

4 (Jury not present.)

5
6 THE COURT: In the case of United States against
7 Sebastian and Gibbons, Mr. Williams.

8 MR. WILLIAMS: Yes. Your Honor, in this Criminal
9 1973-237, under this particular indictment
10 the defendants Anthony Sebastian and Patrick
11 Gibbons are charged with three counts,
12 Count 1 being a conspiratorial count, Count
13 2 and Count 3 being substantive counts.

14 Count 1 charges that the conspired,
15 combined and unlawfully agreed to violate
16 Section 472 of Title 18 by uttering and
17 passing with intent to defraud, forged
18 obligations of the United States, namely
19 36 United States Savings Bonds.

20 Counts 2 and 3 are substantive counts
21 which charge forging and uttering of two
22 separate savings bonds with intent to
23 defraud in violation of Title 18, Section
24 472.

25 The problem, your Honor, as I see it,

1 and after some careful research, including
2 both Second Circuit and Ninth Circuit cases,
3 that under the sections charged under no
4 theory of the Government's proof could we
5 prove that the defendants violated these
6 sections, for, in fact, the savings bonds
7 which are the subject matter of this
8 indictment are in fact genuine obligations
9 of the United States and what is forged is
10 not the obligation but simply the endorse-
11 ment of the owner or beneficiary on the
12 reverse of the savings bond.

13 It does constitute a violation of
14 Section 495 of Title 18. However, that is
15 not what is charged in this indictment and
16 for that reason it is apparent that the
17 indictment is invalid to the extent that
18 were we to go to trial and a conviction were
19 obtained it would be an invalid conviction
20 and subject to reversal and dismissal by
21 the Second Circuit Court of Appeals.

22 THE COURT: Motion, motion to defense.

23 MR. WILLIAMS: Or motion, yes, motion by defense
24 counsel at this stage of the proceedings.
25 Under those circumstances the Government

1 will move to dismiss this indictment and
2 reserve on its right to seek a re-indictment.

3 THE COURT:

Mr. Doyle, Mr. Abramowitz, either one
4 have any comment?

5 MR. DOYLE:

If we may have a moment, your Honor.
6 Your Honor, respectfully, George Doyle
7 appearing on behalf of Patrick Gibbons, I
8 am in complete agreement with the Government's
9 statement of the facts here, that in fact the
10 savings bonds were genuine obligations and
11 that accordingly a conviction, or I should
12 say a motion to dismiss the indictment at
13 the conclusion of the Government's case
14 would have to be granted. I stipulate all
15 of those facts for the purpose of this
16 motion and I have no objection to dismissal
17 of this indictment.

18 MR. ABRAMOWITZ:

Your Honor, speaking for Mr. Sebastian
19 I join in Mr. Doyle's comments. I, however,
20 to try to be as clear as I can, I don't
21 join in Mr. Williams' statement that a
22 violation of any other section of the United
23 States Code could be proved, that clearly
24 it would be impossible for the Government
25 to prove a conspiracy to violate Section

1 472 or any of the 472 charges which are
2 found in Counts 2 and 3 and I reserve all
3 rights to move against any future indictment
4 or information which might be laid, on
5 whatever grounds may arise.

6 MR. DOYLE:

May I also reserve the same rights and
add my stipulation only runs to the proof
of this indictment.

7
8
9 THE COURT:

That is certainly understood. We do
not know what the United States Attorney
will do in the future and whatever he does
in the future certainly you may have the
right to move against.

10
11
12
13
14 Mr. Williams, this is an unfortunate
15 turn of events but it is essential and
16 therefore I have no other alternative on
17 your motion to dismiss the charge pending
18 against both Mr. Sebastian and Gibbons and
19 they are now as far as any bail arrangement
20 this ends the litigation in this particular
21 case. That is Criminal - - -

22 MR. WILLIAMS:

1973-237, your Honor.

23 THE COURT:

1973-237, Very well, Mr. Doyle and
Mr. Abramowitz.

24
25 MR. DOYLE:

May this record, your Honor, also

1 respectfully reflect that a jury was
2 empanelled and sworn as of Tuesday of
3 this week.

4 THE COURT:

No question about that.

5 MR. DOYLE:

Thank you. Fine.

6 MR. ABRAMOWITZ:

Thank you, your Honor.

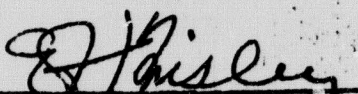
7 THE COURT:

You are all excused.

8
9 (Proceedings concluded at 11:12 A.M.)

10
11 * * * * *

12
13 I certify that the foregoing is a complete
14 and accurate transcription of my shorthand
15 notes taken herein.

16 
17 E.F. KNISLEY, Official Reporter,
18 USDC, WDNY.

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H. T. Noel & E. F. Knisley
OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

CR-1973-237

C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: R. J. ...
vs.	
ANTHONY JAMES SEBASTIAN a/k/a TONY SEBASTIAN; PATRICK GIBBONS	MACEK 883-5000
conspiracy to commit offenses against the U.S. by entering and passing with intent to defraud forged obligations of the U.S. (Ct. 1) in violation of Section 371, Title 18, U.S.C.; Did knowingly and with intent to defraud pass and utter forged obligations of the U.S. (Cts. 2 & 3) in violation of Sections 472 and 2, Title 18, U.S.C.	
	For Defendant: (assigned) (1) Stanley Collesano, Esq. (2) George Doyle, Esq. (1) Philip Abramowitz, Esq. (assigned) replacing Stanley Collesano)

Offenses: 5/4/72-5/26/73 3 Cts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371, 472, 2					

DATE	PROCEEDINGS
June 21 1973	Filed Indictment
June 21	J.S. 2 made
July 5	Filed Magistrate's transcript for Patrick Gibbons
June 28	Filed \$2,000 recognizance bond for Patrick Gibbons
July 5	Filed Magistrate's transcript for Deft. Sebastian, with \$2,000 recog bond
June 28	Defts. being duly arraigned, both enter pleas of not guilty to the Indictment. Both Defts. released on \$2,000 recog. bond. Adj. to July 26, 1973 for motions.
July 25	Filed Deft's - Patrick Gibbons, notice of motion for disclosure, discovery & inspection, production, hearing, Brady material, bill of particulars, and etc., ret. 7/26/1973
July 25	Filed Deft. Anthony James Sebastian's notice of motion for disclosure, discovery & inspection, production, hearing, Brady material, severance, Bill of particulars.
July 26	Return date for motions. Adj. 8/2/1973
Aug. 1	Filed the Govt's response to the motion of Deft. Patrick Gibbons
Aug. 1	Filed the Govt's response to motion of deft. Anthony James Sebastian
Aug. 2	Return date for motions. Govt. advises Court they have responded to deft's motions. Adj. to 9/13/1973 for status report.

DATE	PROCEEDINGS
1973	
May 29	Filed Cy. 5 - CJA-20- Order appt. Stanley Collesano counsel for Deft. Anthony Sebastian - Maxwell Mag.
Sept. 13	Status Report. Adj. to 9/20/1973
Sept. 20	Status Report. Defts. seek more information from the Govt. Adj. to 10/4/1973
Oct. 4	Status Report. No appearances for defts. Govt. advises Court it has responded to defts. motions. Adj. 10/18/1973.
Oct. 4	Filed the Govt's suppl. response - Patrick Gibbons
Oct. 4	" " " " " - Anthony James Sebastian
Oct. 18	Status Report. Adj. to 11/1/1973 for meeting with court.
Nov. 20	Status report. Court sets hearing for 12/19/1973 -
Nov. 29	Filed Govt's motion to move action for trial Anthony Sebastian
Dec. 19	Hearing to suppress. Defts. move to grant their motion to suppress -- Motion granted. Court directs that any appeal must be made within 30 days-from today.
Dec. 21	Filed Order suppressing evidence--CURTIN, J.
1974	
Jan. 2	Filed Court Sten's Transcript of proceeding of Hearing on motion to suppress, before Judge Henderson, on 12/19/1973
Jan. 3	Filed Cy. 2 of CJA-21- Authorization and Voucher for transcript in the amt. of \$24.80; Orig. to the Adm. office for payment.
XXXXXX	XXXXXX
Jan. 14	Filed Govt's notice of appeal from the Suppression Order suppressing all the physical evidence seized from deft. Patrick Gibbons, etc and suppressing statements of deft. Anthony Sebastian, taken on May 24, 1973, etc., which suppression order was entered in this action on the 21st Day of December, 1973; Cy. to Mr. Collesano, Mr. Doyle, and the CCA with statement of docket entries.
Jan. 14	Filed the Govt's Certificate on Appeal
Jan. 30	Orig. pertinent papers, Govt's exhibits, Clerk's certificate, docket entries, mailed to the Clerk, CCA
Mar. 4	Status Report. Adj. generally - appeal pending.
July 1	Status Report. Govt. advises court there is motion pending before the 2nd Cir., Ct. o Appeals. Removed from calander. No appearance for Deft, Sebastian.
Sept. 3	Status report. No appearance for deft. Adj. to 10/22/74
Sept. 9	Filed certified cy, of mandate from CCA that the order of said District Court be and it is hereby reversed in accordance with the opinion of the CCA
Oct. 21	Status report. Adj. to 12/9/74
Dec. 9	Status Report. Govt. informs the Court they are ready for trial - Court directs the Clerk of Court to forthwith take steps to have the file returned from the Court of Appeals.
1975	
Jan. 13	Status report. Suppression hearing must be completed. When this is complete, case is ready for trial. Court to set date for continuance of hearing.
Feb. 14	Filed subpoena to testify - Gary C. Behm, served 2/6/75
Mar. 31	To fix date for hearing. Hearing is set for 4/22/75 - 10:00 a.m.
May 19	Hearing. Adj. to 6/18 at 10:00 a.m.
June 18	Hearing resumed from 12/19/73 with the same appearances. Court orders transcript of the hearing. Court directs that clerk change CJA forms to reflect that Philip Abramowitz is now Atty. for deft. Sebastian, replacing Atty. Stanley J. Collesano.
July 7	Filed Cy 5 of CJA-21 - authorization for Transcript
July 7	Filed Cy. 5 of CJA-20- Order appointing Philip Abramowitz, Esq., as counsel for Deft. Sebastian, replacing Stanley Collesano--CURTIN, Cy. to the Adm. office, Orig. ret. to counsel for submission of voucher.

DATE 1975	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
July 16	Filed CJA 21 Form for voucher for Ct. Steno in the amount of \$72.50		
July 16	Filed Ct. Steno's transcript of proceedings of hearing on motion to suppress, before Judge Curtin.		
Oct. 6	Filed letter dated October 3, 1975 to the Court from Atty., Philip B. Abramowitz, that he does not wish to submit anything further on this case, etc., the Court may decide this case on the materials it has presently before it		
Oct. 20	Status Report. Adj. to 10/28/75 for Government brief.		
Oct. 28	Filed Govt's Findings Of Fact And Conclusions Of Law		
Oct. 28	Return date for Governments brief. Will be filed today and then considered submitted.		
Dec. 4	Filed letter dated 9/12, 1975 from Atty. Abramowitz, to the Court, requesting that the proceedings of 9/17/75 be cancelled. He is satisfied to have the Court make a ruling as to the admissibility of Mr. Sebastian's confession on the present state of the record.		
Dec. 4	Filed Decision-& Order - denying motion to suppress evidence taken from beneath a vehicle, at the time of the arrest; Deft. Sebastian's motion to suppress the statement given by him to the Secret Service Agent on 5/24/73 - denied.-- CURTIN, J.		
Dec. 15	Set date for trial no appearances for defts. Case placed on trial calendar.		
Dec. 22 1976	Status report. Case ready for trial. Adj. to 12-23-75 for meeting		
Jan 9	Pre trial held. Adj. to the ready calendar.		
Apr. 1	Filed subpoena - Anthony Conte, served 3/30/76		
Apr. 8	Filed subpoena - Delores Dumbrosky, ret. no service.		
April 9	Filed subpoena - Kathy Jean Goulder ret. no service.		
Apr. 20	Meeting with counsel. Adj. to 4-26-76		
May 4	Govt. moves case to trial before Judge Curtin at Buffalo, N.Y., whereupon the jury is duly enpanelled; trial is adj. to a date to be fixed by the court.		
May 7	Trial continues from 5/4/76 with the same appearances & jury- On motion of the Government, the indictment is dismissed against both--defts.		
May 14	Filed two subpoenas - Kathy Jean Goulder- underserved; Robert A. Goulder, ret. unserved.		
May 16	Filed subpoena Robert A. Goulder, served 5/6/76		
June 2	Filed order dismissing the indictment against both defts. CURTIN, J.		
June 24	Superseding Indictment filed - see new docket attached - Case is re-opened.		

[illegible]

PU ☐ JUDGE/MAGISTRATE Assigned MO ☐ 0905 Mts ☐ 209 1 Fel ☒ District Office	U.S. vs. GIBBONS, Patrick (LAST, FIRST, MIDDLE)	Case Filed Mo Day 6 24 No. of Defs * 2 Yr 73 Docket No. 73-237	2
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U.S. TITLE/SECTION **18-495 & 2**
18-371
 OFFENSES CHARGED
Aid, abet & induce a person to forge the endorsement on U.S. Savings bond (Cts. 1 through 36)
Conspiracy to forge the endorsement on U.S. Savings Bond (Ct. 37)

U.S. MAG CASE NO	☐ BAIL ☐ RELEASE ☐ AMT ☐ Denied ☐ Set ☐ Date ☐ Bail Not Made ☐ Status Changed (See Docket)	☐ Fugitive ☐ Pers. Recog ☐ PSA ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Ptry Cust ☐ Other
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II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began Summons Served First Appearance	INDICTMENT ☒ Information ☐ High Risk Date 6/21/73** Indict. Waived ☐ In Charging District 6/24/76 Superseding Indict/Info ☒	ARRAIGNMENT 1st Plea Final Plea	TRIAL Trial Set For Trial Began Trial Ended Ver. Dire ☐ ☐ NG ☐ G ☐ NOL ☐ G Plea W/Drawn ☐ NG ☐ G ☐ NOL
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**** Indictment reported dismissed & case closed on 5/76 re: t**

Search Warrant Issued Summons Issued Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint)	DATE INITIAL/NO.	INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT	INITIAL/NO. OUTCOME ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
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U.S. Attorney or Asst. **Roger Williams, AUSA**
 U.S. Courthouse, Buffalo, N.Y. 14202 432-3479
 ATTORNEYS Defense: ☐ CJA ☒ Set ☐ Waived ☐ Self ☐ None / Other ☐ PO ☐ CD

George Doyle
 10 Ellicott Square Building
 Buffalo, N.Y. 14203
 (716) 856-3486

* Show last names and suffix numbers of other defendants on same indictment/information.

(1) Sebastian

DATE	(DOCUMENT NO.)	PROCEEDINGS
6/24/76		Filed Superseding Indictment
6/29/76		P.B.M. - Deft. being duly arraigned enters a plea of not guilty. Court directed that deft's discovery motions be filed by 7/6/76 with argument on 7/13/76. Deft. released on \$2,500 unsecured bond.
7/7/76		Filed \$2,500 unsecured bond
7/12/76		Filed Deft's notice of motion for discovery, ret. 7/20/76
7/13/76		P.B.M. - Motions have been filed on behalf of the Defendant. Govt will respond as scheduled
7/15/76		Filed Govt's response to certain pre-trial motions.
7/15/76		Filed Govt's motion to move action for trial

1976

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCUSABLE DELAY

Interval Period (a)	Start Date End Date (b)	Ex Code (c)	Total Days (d)
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(DOCUMENT NO.)

7/23/76

P.B.M. - Adj. argument to 7/27/76 (this entry applies only to Co-deft. Sebastian)
Proceedings before the Magistrate - Oral argument on motion for inspection of Grand Jury minutes of superseding indictment.
Motion denied - discovery is complete.

7/27/76

8/4/76

Pre-trial scheduled but not held. Defense counsel Robert Macek on vacation. Adj. 8/11/76 (Re Co-Deft. Sebastian)

8/11/76

Meeting scheduled but not held. No appearance for defts. Adj. to 8/18/76

8/23/76

Filed Ct. Steno's transcript of proceedings taken on 5-4-76 before Judge Curtin and jury.

8/18/76

Meeting held Robert Macek & Roger Williams, George Doyle absent. Defts to file motions by 9-13-76, Govt. to respond by 9-27-76

9/13/76

Return date for motions. No motions filed by defts. Adj. 9/20/76

9/20/76

Return date for deft's motions. No appearance for deft. Motions are to be filed today.

9/27/76

Return date for briefs. No appearance for deft.; At request of deft. Sebastian Adj. to 10/4/76

9/28/76

Filed Deft's notice of motion for dismissal etc., ret. 10/4/76

10/4/76

Filed Govt's memorandum in opposition to deft's motion to dismiss the superseding indictment on the grounds of double jeopardy

10/4/76

Return date for briefs. Govt. Brief to be filed today. Adj. to 10/26/76 for deft's memo. No appearance for deft.

10/26/76

Filed Defendant's memorandum submitted in answer to the Government's memorandum of 10/4/76 and in support of the defendants' Sebastian and Gibbon's motion to dismiss the instant indictment.

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

GIBBONS, PATRICK

Case Filed

73 237 2

Yr. | Docket No. | De

DATE	F. PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELA			
		(a)	(b)	(c)	(d)
10/26/76	Memo due. Will be filed today, - Atty. Macek				
12/6/76	Filed Govt s reply memorandum				
12/6/76	Return date for Govt. brief. To be filed today. Expiration 30 days	3	12/6/76 1/8/77	G	
3/14/77	Filed Decision and Order - that the Court believed it proper to dismiss the original indictment. Double jeopardy does not bar the prosecution under the reindictment; This court does not believe the defendants' Sixth amendment rights have been violated, etc.--Curtin, J.				
3/18/77	Pre-trial conference held. Adj. to 4/4/77 for Status Report				
3/23/77	Filed Defts' notice of appeal from the Dist. Court 's Order entered 3/14/77, denying defendants' motion to dismiss the Indictment herein on the grounds of (1) former jeopardy and (2) failure to afford defendants' a speedy trial	3	3/23/77	D	
3/24/77	Cy. of Deft's notice of appeal mailed to the CCA with statement of Docket entries, and to the U.S. Atty.				
4/4/77	Status report. Deft has filed a notice of appeal on the double jeopardy question. Removed from Calendar at this time.				

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PO ☐ MO ☐ MS ☐ Fel ☒	JUDGE/MAGISTRATE Assigned 0905 209 1 District Office	U.S. vs. SEBASTIAN, Anthony James (LAST, FIRST, MIDDLE)	Case Filed Mo. Day, 6 24 No. of Defs. * 2	73 73-237 1
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U.S. TITLE/SECTION 18-495 & 2 18-371	OFFENSES CHARGED Aid, abet & induce a person to forge the endorsement on U.S. Savings bond (Cts. 1 through 36) Conspiracy to forge the endorsement on U.S. Savings Bond (Ct. 37)	ORIGINAL COUNTS 36 1
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U.S. MAG. CASE NO.	
BAIL - RECEIPT	
☐ Denied ☐ Set	☐ Fugitive ☐ Pers. Recog. ☐ JPSA conditions
\$ 000 Date	☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Party Cust. Other
☐ Bail Not Made ☐ Status Changed (See Docket)	

II. KEY DATES & INTERVALS			
ARREST or U.S. Custody begun Summons Served First Appearance	INDICTMENT ☒ High Risk Date 6/2/73** Indict. Waived In Charging District Superseding Indictment ☒ 6/24/76	ARRAIGNMENT 6/28/73 1st Plea ☒ NG ☐ G ☐ NOL Final Plea ☐ NG ☐ G ☐ NOL	TRIAL Trial Set For Trial Began Trial Ended Trial Set For Trial Began Trial Ended

Indictment reported dismissed & case closed on in 5/76			
Search Warrant Summons Arrest Warrant Issued COMPLAINT OFFENSE (in Complaint)	DATE INITIAL/NO.	INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT Type Number	OUTCOME ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst. Roger Williams, AUSA U.S. Courthouse, Buffalo, N.Y. 14202 432-3479	ATTORNEYS Defense ☒ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CD Robert Macek, Esq. Clinton House, 556 Franklin Street Buffalo, N.Y. 14202 (716) 883-5000
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(2) GIBBONS	
DATE 6/24/76 6/29/76 7/7/76 7/7/76	PROCEEDINGS Filed Superseding Indictment P.B.M. - Deft. being duly arraigned enters a plea of not guilty. Court directed that deft's discovery motions be filed by 7/6/76 with argument on 7/13/76. Deft. released on \$2,500 unsecured bond. Mr. Abramowitz advised the Court that he wished to withdraw as counsel for deft. Sebastian and after deft. had completed a financial affidavit, Atty. Robert Macek was assigned. Filed \$2,500 unsecured bond Filed Cy. 5 of CJA-20 - Order appointing Robert Macek, as counsel, Maxwell, Mag.

DATE	DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCUSABLE DELAY			
				Interval Section II (a)	Start Date End Date (b)	LR Code (c)	Total Days (d)
7/13/76		P.B.M. - Proceedings before the Magistrate Motions have been filed. Govt. will respond as scheduled.					
7/15/76		Filed Govt's response to certain pre-trial motions.					
7/15/76		Filed Govt's motion to move action for trial					
7/23/76		Proceedings before the Magistrate - Adj. argument to 7/27/76 - Charge time to Govt.					
7/26/76		Filed Deft's notice of motion for disclosure etc., ret. Magistrate - 7/20/76					
7/27/76		Proceedings before the Magistrate - Oral argument on motion for inspection of grand jury minutes of superseding indictment. Motion denied - discovery is complete.					
8/4/76		Pre-trial scheduled but not held. Defense counsel Robert Macek on vacation. Adj. 8/11/76					
8/11/76		Meeting scheduled but not held. No appearance for defts. Adj. to 8/18/76					
8/23/76		Filed Ct. Steno's transcript of proceedings taken on 5-4-76 before Judge Curtin and jury.					
8/23/76		Filed copies 2 & 5 CJA 21 authorization and voucher in the amt. of \$18.00 for Ct. Steno, copies 1 & 4 mailed to Adm. office. CURTIN, J.					
8/18/76		Meeting held with Robert Macek & Roger Williams, George Doyle absent. Defts to file motions by 9-13-76 Govt. to respond by 9-27-76.					
9/13/76		Return date for motions. No motions filed by defts. Adj. to 9/20/76					
9/20/76		Filed deft's notice of motion for order dismissing the indictment, etc., ret. 10/4/76					
9/20/76		Return date for deft's motions. No appearance for deft. Motions are to be filed today					
9/27/76		Return date for briefs. No appearance for deft. Gibbons. At request of deft. adj. to 10/4/76.					
10/4/76		Filed Govt's memorandum in opposition to deft's motion to dismiss the superseding Indictment on the grounds of double jeopardy					

FINE AND RESTITUTION PAYMENTS				
RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
10/4/76	Return date for briefs. Govt. brief to be filed today. Adj. to 10/26/76 for deft's memo				
10/26/76	Filed Defendant's memorandum submitted in answer to the Government's memorandum of 10/4/76 and in support of the defendants' Sebastian and Gibbon's motion to dismiss the instant indictment				
10/26/76	Memo due. Will be filed today - Atty. Macek				
2/6/76	Filed Govt's reply memorandum				
12/6/76	Return date for Govt. brief. To be filed today. Expiration 30 days	3	12/6/76		
3/14/77	Filed Decision and Order - that the court believed it proper to dismiss the original indictment. Double jeopardy does not bar the prosecution under the reindictment; This court does not believe the defendants' Sixth amendment rights have been violated, etc.--Curtin, J.		1/4/77		G
3/18/77	Pre-trial conference held. Adj. to 4/4/77 for Status Report.				
3/23/77	Filed Defts' notice of appeal from the District Court's Decision and Order, entered 3/14/77, denying defendants' motion to dismiss the indictment herein on the grounds of (1) former jeopardy and (2) failure to afford defendants a speedy trial.	3	3/23/77		D
3/24/77	Cy. of Notice of appeal mailed to the U.S. Atty., and CCA with statement of docket entries.				
4/4/77	Status report. Deft has filed a notice of appeal on the double jeopardy question. Removed from calendar at this time.				

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CERTIFICATION

This is to certify that I served two copies of the enclosed brief on appeal and one copy of the enclosed joint appendix on Richard J. Arcara, Esq., United States Attorney, United States Courthouse, Buffalo, New York, 14202, Attention Roger P. Williams, Esq., Assistant United States Attorney by placing the same in a fully post paid envelope in the United States Post Office depository.



ROBERT C. MACEK

Dated: June 20, 1977